



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2011

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-04036

Dear Ms. Angadicheril:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412163 (OGC# 134691).

The University of Texas at Austin (the "university") received a request for the following: 1) the personnel file of a named university employee; 2) any sexual harassment complaints filed by full or part-time employees or interns of the university's athletic department from January 1, 2008 to the date of the request; and 3) information pertaining to the university's investigation of a complaint filed against the named university employee. You state you will release information pertaining to category one of the request. You state the university does not maintain information responsive to category two of the request.¹ You state some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You also state

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

that, as permitted by section 552.024(c) of the Government Code, you will redact information subject to section 552.117 of the Government Code.³ In addition, you state you will redact certain information in accordance with Open Records Letter No. 684 (2009).⁴ You claim that portions of the requested information are not subject to the Act. You claim portions of the submitted information are the subject of prior rulings issued by this office. Additionally, you claim that some of the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.⁵

Initially, we note you have marked portions of the submitted information as being non-responsive to the request for information. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, you assert the [u]niversity of Texas Electronic Identification Numbers ("UTEIDs") contained in the submitted documents are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that when combined with an individual's password, the UTEIDs serve as "the required log on protocol to access the computer mainframe, the University's centralized hub that runs all its high-level electronic functions." You indicate the UTEIDs are used solely to access the university's computer mainframe and

³Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c).

⁴This office issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including: a direct deposit authorization form under section 552.101 of the Government Code in conjunction with the common-law right to privacy; a Form I-9 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code; a W-4 form under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; a Texas driver's license number and copy of a Texas driver's license under section 552.130 of the Government Code; and a bank account number and bank routing number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

that the UTEIDs and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs contained in the submitted documents do not constitute public information under section 552.002 of the Government Code. We, therefore, conclude the UTEIDs are not subject to the Act and need not be released to the requestor.

Next, you state portions of the submitted information, which you have marked, were the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-00356 (2011), 2011-00418 (2011), 2011-00488 (2011), and 2011-00661 (2011). As we have no indication that the law, facts, or circumstances on which the prior rulings were based have changed, we conclude the university must continue to rely on these rulings as previous determinations and withhold or release any previously ruled upon information in accordance with the prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Next, we will consider your arguments for the information not subject to the prior rulings.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You claim section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

- (A) ethics and standards of conduct;
- (B) financial reporting;
- (C) internal accounting controls; or
- (D) auditing.

...

(e) Information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under [the Act].

Educ. Code § 51.971(a), (e). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education. *Id.* § 51.971(a)(1). You state the information you have marked pertains to a complaint and subsequent investigation pertaining to “ethical questions and standards of conduct relating to employees of the university.” Based on your representations and our review, we agree the information you have marked pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the information you have marked pertains to an ongoing compliance investigation by the university. You further assert release of the information at this time would interfere with the investigation. Accordingly, we conclude the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code.⁶

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Common-law privacy encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* Thus, a public employee’s allocation of part of the employee’s salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g., ORD 600 at 9-12 (participation in TexFlex), 545 at 3-5 (deferred compensation plan).* Likewise, the details of an employee’s enrollment in a group insurance

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

program, the designation of the beneficiary of an employee's retirement benefits, and an employee's authorization of direct deposit of the employee's salary are protected by common-law privacy. *See* ORD 600 at 9-12. This office has also determined that a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). We have marked the personal financial information the university must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. Further, to the extent the information you have marked concerns an employee benefit or other salary deduction that is financed exclusively by the employee, the university must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that this marked information concerns an employee benefit or other salary deduction to which the university makes a financial contribution, the marked information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136(a)-(b). You seek to withhold a teleconferencing access code under section 552.136. You explain that the teleconferencing telephone number and access codes do not change, and can be used to access teleconferencing accounts of the university in order to arrange long distance telephone calls. Upon review, we determine that the university must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the university must continue to rely on Open Records Letter Nos. 2011-00356, 2011-00418, 2011-00488, and 2011-00661 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code. The university must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information you have marked concerns an employee benefit or other salary deduction that is financed exclusively by the employee, the university must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the access device number you have marked under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 412163

Enc. Submitted documents

c: Requestor
(w/o enclosures)